

Appl. No. 09/147,693
Amdt. Dated Apr. 5, 2004
Reply to Final Office Action of June 3, 2003

REMARKS

Claims 38-45, 49-65, 69-72, and 77-78 were pending in the instant application. By this Amendment, Applicants have canceled claims 63-65 and 71-72, without prejudice to their future presentation. Applicants have amended claims 39 and 49 to correct minor typographical errors. Support for the claim amendments can be found in the specification and claims as originally filed. The present Amendment introduces no new matter, and thus, its entry is respectfully requested. Upon entry of the present Amendment, claims 38-45, 49-62, 69, 70, 77, and 78 will be pending and under examination. Applicants point out that all of these now-pending claims have been deemed allowable by the Examiner.

June 3, 2003 Final Office Action and December 9, 2003 Advisory Action:

Examiner's Rejection under 35 U.S.C. §112, first paragraph:

The Examiner maintained the rejection of claims 63-65 and 71-72 under 35 U.S.C. §112, first paragraph, as allegedly containing subject matter that was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention.

Specifically, the Examiner took the position that the claims were not enabled because vaccine making is a poorly enabled art which relies heavily on a trial and error process for discovery and development. The Examiner stated that the instant claims, drawn to a vaccine, do not provide the necessary information for the making of any vaccine, and thus, to make one would require undue experimentation. The Examiner pointed to the complexity of the invention and the general uncertainty and unpredictability involved in making a vaccine. The Examiner acknowledged,

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however, that the Miller and Gregoriadis publications, previously referred to, indicate the ability of bacterial cells to induce an immunogenic response.

In the December 9, 2003 Advisory Action, the Examiner indicated that amending the rejected claims to recite an "immunogenic" rather than a "vaccine" composition (as proposed in Applicants' unentered November 3, 2003 Amendment, would not place the application in condition for allowance, and would require a new search.

In response, without conceding the correctness of the Examiner's position, but to expedite allowance of the instant application, Applicants have canceled claims 63-65 and 71-72 without prejudice, rendering the Examiner's rejection under 35 U.S.C. §112, first paragraph, moot. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Allowable Subject Matter

The Examiner has indicated the allowance of claims 38-45, 49-62, 69, 70, 77, and 78.

In response, Applicants acknowledge and appreciate the allowance of these claims. In light of the above claim cancellations, Applicants point out that only claims deemed allowable now remain pending in the application.

In view of the above amendments and remarks, it is believed that the presently pending claims satisfy the requirements of the patent statutes and fully address the Examiner's concerns as set forth in the June 3, 2003 Final Office Action and the December 9, 2003 Advisory Action. Reconsideration of the instant application and early notice of allowance therefore are requested. The

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Examiner is invited to telephone the undersigned if it is deemed to expedite allowance of the application.

Respectfully submitted,

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